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11			
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13	LINITED STATE	S DISTRICT COURT	
14	UNITED STATES DISTRICT COURT CENTRAL DISTRICT OF CALIFORNIA		
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16	MEGAN SCHMITT, DEANA REILLY, CAROL ORLOWSKY, and	Case No. 8:17-cv-01397-JVS-JDE	
17 18	STEPHANIE MILLER BRUN, individually and on behalf of themselves and all others similarly situated,	PLAINTIFFS' EX PARTE APPLICATION TO STAY THE CASE AND MOTION FOR DISCOVERY SANCTIONS	
19	Plaintiffs,		
20	V.	Filed Concurrently With [Proposed] Order and Declaration of Adam Gonnelli	
21	YOUNIQUE, LLC,	Deciaration of Haam Connecti	
22	Defendant.		
23		Complaint Filed: 8/17/17	
24		Trial Date: 2/19/19	
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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiffs in the above-captioned action request that this Court grant a stay of the proceedings in this case and that the Court grant sanctions under Federal Rule of Civil Procedure 37 against Younique and/or their counsel of record, Sheppard Mullin Richter and Hampton LLP for its refusal to proffer 30(b)(6) witnesses who were prepared to testify regarding the topics for which they had been designated.

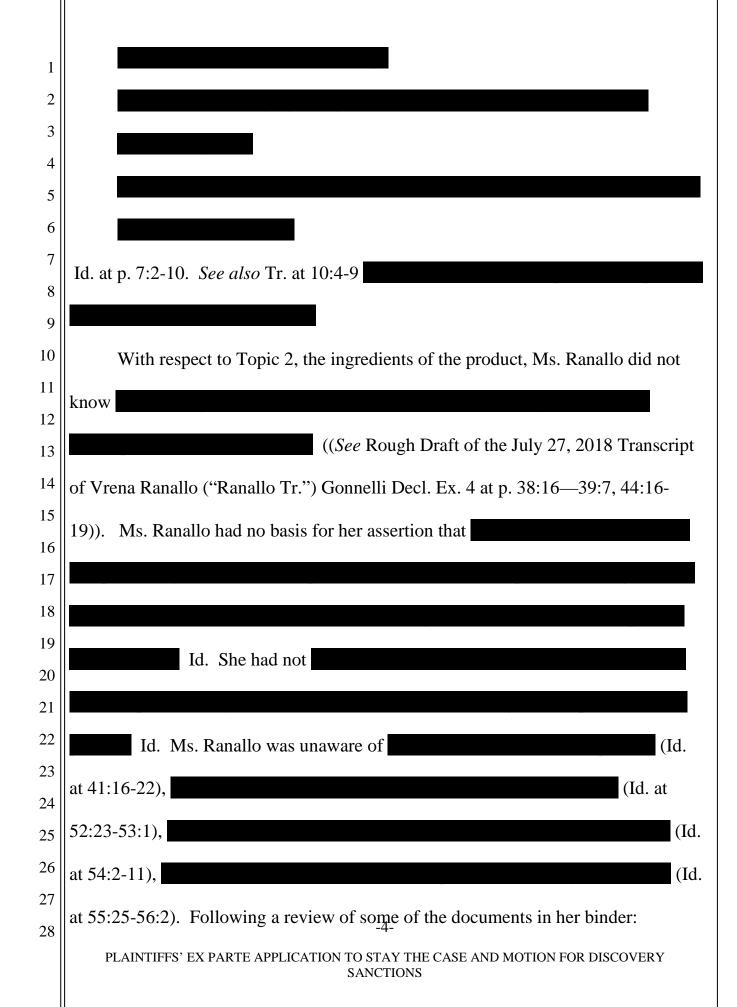
Defendant's failure to designate and make available for deposition appropriate 30(b)(6) witnesses is just the latest in a long line of discovery violations which have delayed the progress of this case and have given rise to discovery motions now pending before Your Honor and Magistrate Judge Early.

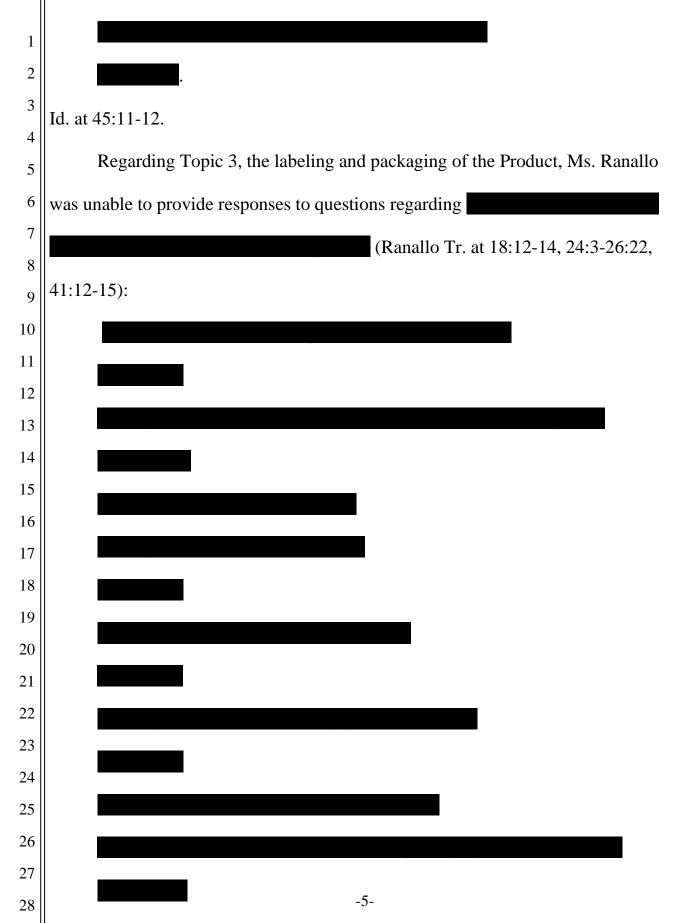
II. DEFENDANT HAS FAILED TO PRODUCE ADEQUATE 30(b)(6) WITNESSES

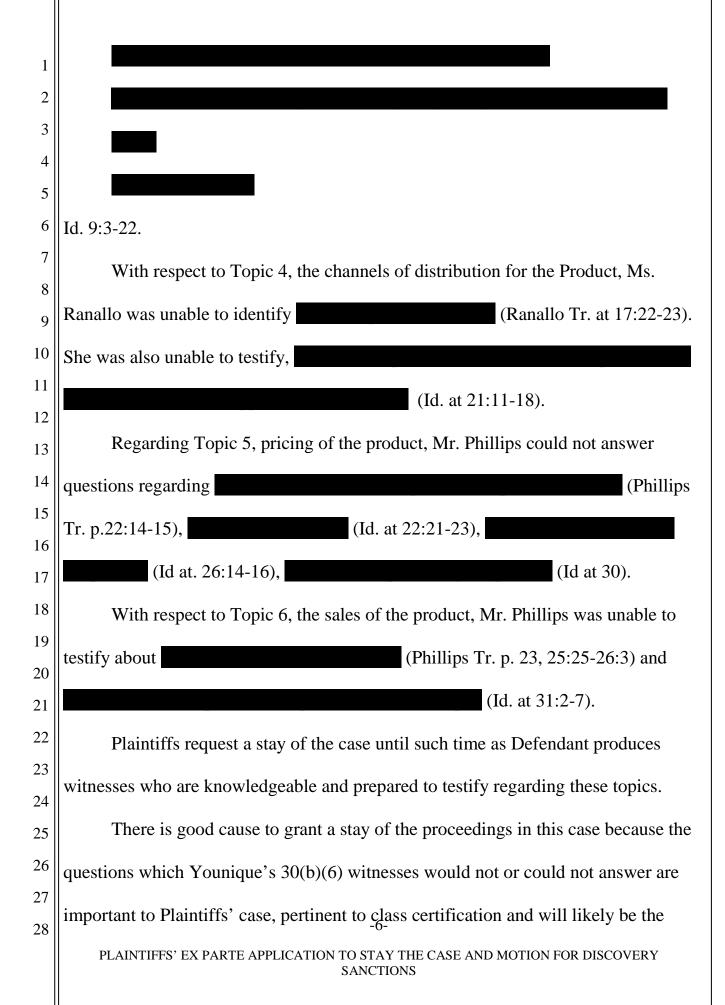
On June 4, 2018 Plaintiffs served a Rule 30(b)(6) Notice of Deposition. The notice listed seven topics: 1) the existence and location of the documents requested in Plaintiffs' Request for Production of Documents; 2) the ingredients used in the product; 3) the labeling and packaging of the product; 4) the channels of distribution for the product; 5) the price of the product during the relevant time period; 6) sales of the product during the relevant time period; and 7) training of and materials provided to presenters. (*See* Plaintiffs' Notice of 30(b)(6) Deposition annexed as Exhibit 1 to the Declaration of Adam Gonpelli ("Gonnelli Decl.").

PLAINTIFFS' EX PARTE APPLICATION TO STAY THE CASE AND MOTION FOR DISCOVERY SANCTIONS

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subject of expert testimony. Moreover, Younique's refusal to produce knowledgeable and prepared 30(b)(6) witnesses for deposition (part of a persistent and ongoing refusal to provide requested discovery to which Plaintiffs are entitled) warrants sanctions under Rule 37.

II. DEFENDANT'S CONDUCT REQUIRES SANCTIONS UNDER FRCP 37

A court may impose sanctions for discovery violations through Rule 37. Grimes v. City and County of San Francisco, 951 F.2d 236, 241 (9th Cir. 1991). Rule 37 sanctions are mandatory and must be applied diligently both to penalize those whose conduct may be deemed to warrant such a sanction, [and] to deter those who might be tempted to such conduct in the absence of such a deterrent." Wingnut Films, Ltd. v. Katja Motion Pictures Corp., No. 05-cv-1516-RSWL, 2007 U.S. Dist. LEXIS 72953, at *54 (C.D. Cal. Sept. 18, 2007. "The burden is on the disclosing party to show that the failure to disclose information or witnesses was justified or harmless." FormFactor, Inc. v. Micro-Probe, Inc., Case No. 4:10-cv-3095-PJH, 2012 U.S. Dist. LEXIS 62233, at *26 (N.D. Cal. May 3, 2012) (citing *Yeti by Molly*, Ltd. v. Deckers Outdoor Corp., 259 F.3d 1101, 1107 (9th Cir. 2001)). Willfulness, bad faith, or fault of the party including disobedient conduct not shown to be outside the litigant's control also prevent findings of substantial justification. Tacori Enters., Inc. v. Beverlly Jewellry Co., Ltd., 253 F.R.D. 577, 582 (C.D. Cal. 2008)

 $_{1}$ (citations omitted).

Further, under Rule 37(d)(1)(A)(i), sanctions are available when the failure to produce an adequately prepared witness pursuant to Rule 30(b)(6) is tantamount to a failure to appear. *See JSR Micro, Inc. v. QBE Ins. Corp*, 2010 U.S. Dist. LEXIS 56000 (awarding sanctions under Rule 37(a)(5)(A) for unprepared 30(b)(6) witness); *Black Horse Lane Assocs., L.P. v. Dow Chem. Corp.*, 228 F.3d 275, 304 (3d Cir. 2000) (affirming monetary sanctions because "if a Rule 30(b)(6) witness is unable to give useful information, he is no more present for the deposition than would be a deponent who physically appears for the deposition but sleeps through it"); *Resolution Trust Corp. v. S. Union Co.*, 985 F.2d 196, 197,198 (5th Cir. 1993) (same); *Great Am. Ins. Co. of N. Y. v. Vegas Constr. Co., Inc.*, 251 F.R.D. 534, 543 (D. Nev. 2008) (same).

Here, this is little doubt that an award of reasonable expenses is warranted. Plaintiff's counsel spent dozens of hours preparing for the depositions of Defendant's 30(b)(6) witnesses and incurred expenses flying from New York to Utah in order to conduct said depositions. As demonstrated above, Defendant's witnesses were utterly unprepared to answer basic questions on topics for which they were designated, especially Ms. Ranallo, who relied entirely on a binder of documents provided by Younique's counsel, and still could not testify regarding

PLAINTIFFS' EX PARTE APPLICATION TO STAY THE CASE AND MOTION FOR DISCOVERY SANCTIONS

alone substantial one, for its failure to produce knowledgeable and prepared 30(b)(6)

Defendant cannot offer any justification, let

1	witnesses for deposition, and thus Rule 37 sanctions are warranted. See Avago	
2	Techs., Inc. v. IPtronics Inc., No. 5:10-cv-02863-EJD 2015 U.S. Dist. LEXIS 66177	
3 4	* 10-16 (N.D. Cal. May 19, 2015) (sanctioning company for costs and fees for	
5	producing a 30(b)(6) witness who could not speak about 9 of 24 designated topics).	
6		
7 8	III. PLAINTIFFS PROVIDED APPLICATION	NOTICE OF THE SUBJECT EX PARTE
9	On July 27, 2018, as a result	of Ms. Ranallo's unpreparedness, Plaintiffs'
10	suspended the deposition pending Younique producing a witness who could answer	
11	the questions posed to Ms. Ranallo. (Ranallo Tr. at 57). Younique's counsel took	
12	the position that Ms. Ranallo was not unprepared and that Younique would not	
13	produce any additional 30(b)(6) witnesses.	
14		
15	For the reasons above, Plaintiffs request that the proposed stay be granted,	
16	well as the requested sanction against Younique and/or its counsel.	
17 18	Dated: July 30, 2018	NYE, PEABODY, STIRLING, HALE & MILLER, LLP
19 20		By: /s/ Jonathan D. Miller, Esq. Alison M. Bernal, Esq.
21	[Signatures continued on following page.]	
22		
23	Dated: July 30, 2018	CARLSON LYNCH SWEET
24		KILPELA & CARPENTER, LLP
25		By: /s/ Ed Kilpela, Esq.
26		
27 28	Dated: July 30, 2018	THE SULTZER LAW GROUP P.C.

PLAINTIFFS' EX PARTE APPLICATION TO STAY THE CASE AND MOTION FOR DISCOVERY SANCTIONS

1		By: /s/ Adam Gonnelli, Esq.
2		raum comioni, 2sq.
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4	Dated: July 30, 2018	WALSH, PLLC
5		
6		By: /s/ Bonner Walsh, Esq.
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8		Attorneys for Plaintiffs and the Class
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